



**BOULT • CUMMINGS
CONNERS • BERRY PLC**

RECEIVED
2004 FEB 11 AM 10:12
Email jhastings@boultcummings.com
Jon E Hastings
(615) 252-2306
Fax (615) 252-6306

February 11, 2004

TR.A. DOCKET ROC 1

Honorable Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re Implementation of the Federal Communications Commission's Triennial
Review Order (Nine-month Proceeding) (Loop and Transport)

Docket No 03-00527

Dear Chairman Tate

Enclosed please find the original plus fourteen (14) copies of the Non-Proprietary version of MCImetro Access Transmission Services, Inc Brooks Fiber Communications of Tennessee, Inc and MCI WorldCom Communications, Inc (collectively "MCI") Responses to BellSouth's Subpoena Duces Tecum in the above-referenced docket Also enclosed in a sealed envelope is a proprietary version of the Responses

Copies have been served on all parties of record

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

Jon E Hastings

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Implementation of the Federal)	
Communication Commission's)	Docket No. 03-00527
Triennial Review Order – 9 Month)	
Proceeding – Loops and Transport)	

**MCI'S RESPONSES TO
BELLSOUTH'S SUBPOENA DUCES TECUM**

MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Tennessee, Inc and MCI WorldCom Communications, Inc (hereinafter collectively referred to as "MCI"), by and through its undersigned counsel, hereby produce its Responses to the Subpoena *Duces Tecum* for Deposition served by BellSouth Telecommunications, Inc ("BellSouth")

General Objections

MCI makes the following General Objections to BellSouth's Subpoena *Duces Tecum* for Deposition, including the applicable definitions and general instructions therein ("BellSouth discovery"), which, as appropriate, are specifically identified and incorporated into the relevant responses below

1 MCI objects to the BellSouth discovery to the extent it seeks to obtain information regarding "former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of MCI" as such information is not within MCI's control, it would be unduly burdensome to attempt to obtain, and it is likely irrelevant

2 MCI objects to the BellSouth discovery to the extent that such discovery calls for information that is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege

3 MCI objects to the BellSouth discovery insofar as such discovery is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these requests. Any responses provided by MCI in response to the BellSouth discovery will be provided subject to, and without waiver of, the foregoing objection

4 MCI objects to the BellSouth discovery insofar as such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action

5 MCI objects to the BellSouth discovery insofar as it seeks information or documents, or seeks to impose obligations on MCI that exceed the requirements of the Tennessee Rules of Civil Procedure, Tennessee law, or any other applicable laws, rules or procedures

6 MCI objects to providing information to the extent that such information is already in the public record before the Tennessee Regulatory Authority (the "Authority") or which is already in the possession, custody, or control of BellSouth

7 MCI objects to the BellSouth discovery to the extent that such discovery is overly broad, unduly burdensome, expensive, oppressive, or excessively time consuming as written

8 MCI objects to each and every request to the extent that the information requested constitutes "trade secrets" under applicable law. To the extent that BellSouth's requests seek proprietary confidential business information that is not the subject of the "trade secrets"

privilege, MCI will make such information available to counsel for BellSouth pursuant to an appropriate Protective Agreement, subject to any other general or specific objections contained herein

9 MCI is a large corporation with employees located in many different locations in Tennessee and in other states. In the course of its business, MCI creates countless documents that are not subject to Authority or FCC retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. MCI will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the BellSouth discovery purports to require more, MCI objects on the grounds that compliance would impose an undue burden or expense.

10 MCI objects to the BellSouth discovery that seeks to obtain “all,” “each,” or “every” document, item, customer, or other such piece of information to the extent that such discovery is overly broad and unduly burdensome. Any answers that MCI may provide in response to the BellSouth discovery will be provided subject to, and without waiver of, this objection.

11 MCI objects to the BellSouth discovery to the extent such discovery seeks to have MCI create documents not in existence at the time of the request.

12 MCI objects to the BellSouth discovery to the extent that such discovery is not limited to any stated period of time or relates to a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

13 In light of the short period of time MCI has been afforded to respond to the BellSouth discovery, the development of MCI's positions and potentially responsive information to the BellSouth requests is necessarily ongoing and continuing. MCI expressly reserves the right to supplement or modify its discovery responses based on its ongoing inquiry.

14 MCI objects to each and every discovery request that seeks information regarding MCI's operations in ILEC service areas other than the BellSouth ILEC service area as such information is irrelevant to BellSouth's case in this docket and such discovery is overly broad and unduly burdensome.

15 The Authority previously established deadlines for the serving of discovery in this docket. Those deadlines have passed. On October 27, 2003, BellSouth served discovery on MCI. That discovery consisted of data requests that had been previously agreed upon by the parties as to form. On or about November 26, 2003, MCI served responses to BellSouth's discovery. On or about December 15, 2003, MCI supplemented its responses. No further discovery was filed by BellSouth, until January 23, 2004, when Bell South filed the present "Subpoena Duces Tecum." Notwithstanding the style of BellSouth's filing, BellSouth's discovery in this instance consists of interrogatories, requests for admission, and requests for production of documents, all of which were subject to the Authority's now-passed discovery deadline. BellSouth's improper efforts to evade the discovery deadline are apparent not only from reviewing BellSouth's discovery, but also because BellSouth recently served nearly identical discovery on MCI and other CLECs in the Alabama Triennial Review loop and transport docket, In re Federal Communications Commission's Triennial Review Order (Phase III)-Route-Specific High Capacity Transport and Location-Specific High Capacity Loops, Docket No. 29054. The Alabama discovery was styled "BellSouth Telecommunications, Inc.'s

Request for Admissions and Interrogatories and Requests for Production of Documents ” By purporting to serve a “Subpoena Duces Tecum For Deposition,” which requests that MCI appear for a deposition and produce documents – in lieu of which MCI is invited to provide information that is “fully and completely responsive” to the “matters upon which examination is requested” – BellSouth has engaged in a transparent attempt to circumvent the Authority’s discovery deadlines and the scheduling order previously entered in this docket

Responses to Specific Questions

1 Please admit that MCImetro Access Transmission Services, Inc , Brooks Fiber Communications of Tennessee, Inc , MCI WorldCom, Inc (“MCI Companies”) has deployed high capacity transport facilities to each of the central offices (identified by CLLI codes) listed in Exhibit 1 attached hereto

MCI’S RESPONSE: MCI adopts and incorporates its General Objections 3, 4, 10, 12, 14, and 15 MCI further objects on the ground that “high capacity transport facilities” has not been defined by BellSouth Thus, MCI is unable to answer this question as it is vague Objecting further, MCI notes that it does not configure its network according to “routes” between pairs of ILEC central offices or wire centers MCI additionally objects, noting that neither the deployment of backhaul facilities nor a transmission “route” between an MCI collocation and an MCI switch or node constitutes dedicated transport for purposes of the Triennial Review triggers or potential deployment analysis See Triennial Review Order, ¶¶ 365-367 Additionally, MCI objects to this request to the extent it seeks information regarding transport or transmission facilities other than dedicated transport or along a “route” as defined in the Triennial Review Order for purposes of the triggers or potential deployment analysis MCI withdraws the statement in its objections filed on February 2, 2004 for this Question, that it does not deploy dedicated transport on a “route,” as such term is defined by the trigger analyses mandated by the Triennial Review Order, between pairs of ILEC wire centers in BellSouth service territories in Tennessee

Subject to and without waiving these objections, MCI states that it has deployed fiber optic transmission facilities to each of the central offices listed in Exhibit 1

2 Please admit that MCI Companies can route or transport traffic using MCI Companies’ own facilities between any pair of central offices to which it has deployed high capacity transport facilities This includes routing or transporting traffic directly between the central offices or indirectly through an intermediate aggregation point, such as MCI Companies’ switch or the switch of another MCI Companies

MCI’S RESPONSE: MCI adopts and incorporates its General Objections 3, 4, 10, 12, 14, and 15 Further, MCI objects on the ground that neither “transport” nor “route” has been defined by BellSouth Thus, MCI is unable to answer this question as it is vague Objecting further, MCI notes that it does not configure its network according to “routes” between pairs of ILEC central offices or wire centers MCI additionally objects, noting that neither the deployment of backhaul facilities nor a transmission “route” between an MCI collocation and an MCI switch or node constitutes dedicated transport for purposes of the Triennial Review triggers or potential deployment analysis See Triennial Review Order, ¶¶ 365-367 Additionally, MCI objects to this request to the extent it seeks information regarding transport or transmission facilities other than dedicated transport or along a “route” as defined in the Triennial Review Order for purposes of the triggers or potential deployment analysis Objecting further, MCI states that the Triennial Review Order, ¶401, is clear that the “intermediate” wire center “X” is “on the incumbent LEC’s network ” CLEC switches or wire centers, as explained in the FCC’s discussion of dedicated transport, are not on the incumbent LEC’s network Accordingly, BellSouth’s interpretation of the FCC’s definition of transport “routes” is inconsistent with the plain reading of the “route”

definitions provided in the TRO MCI also objects that this question is overbroad, unduly burdensome, oppressive and not reasonably calculated to lead to the discovery of relevant and admissible evidence MCI withdraws the statement in its objections filed on February 2, 2004 for this Question, that it does not deploy dedicated transport on a "route," as such term is defined by the trigger analyses mandated by the Triennial Review Order, between pairs of ILEC wire centers in BellSouth service territories in Tennessee

Subject to and without waiving these objections and the notice of unavailability of data, MCI states that it can neither admit nor deny this request By way of further explanation, once traffic is delivered to MCI at any of its on-net collocation sites it theoretically "can" be delivered to any other MCI on-net collocation locations without leaving MCI's network This means that, while it would be technically possible to provide such delivery, additional work (e.g., construction, installation) may in some instances need to be undertaken to deploy the network in the manner assumed by BellSouth Whether such additional work has been or would be undertaken would be driven by customer demand, not network architecture To make such assumptions, however, satisfies neither the Triennial Review triggers nor potential deployment analysis

3 Please admit that MCI Companies has fiber based collocation arrangements at the central offices (identified by CLLI code) listed below

MCI'S RESPONSE: MCI adopts and incorporates its General Objections 3, 4, 10, 12, 14, and 15 MCI further objects on the ground that the phrase "fiber based collocation arrangements" is vague and ambiguous MCI understands a "collocation arrangement" to be an arrangement under which MCI or another CLEC obtains space within an ILEC central office

Subject to and without waiving its objections, MCI admits that it has deployed fiber optic transmission facilities that terminate at a collocation arrangement at the central offices (identified by CLLI code) listed in the Question

4 If MCI Companies has denied any of the previous Requests for Admissions, state all facts and identify all documents that support such denial

MCI'S RESPONSE: See MCI's objections and responses to RFA Nos 1, 2, and 3 Further answering subject to and without waiving its objections and the notice of unavailability of data, MCI states that it *****PROPRIETARY INFORMATION*****

5 If MCI Companies has admitted any portion of Item 2 above, please describe with particularity the nodes or termination points along the route

MCI'S RESPONSE: See MCI's response to Question No 2 Further answering, subject to and without waiving its objections and the notice of unavailability of data, MCI states that it is providing responsive information in a highly confidential attachment pursuant to the Protective Agreement previously executed between the parties to this proceeding

6 If MCI Companies has deployed any high capacity loop facilities in any of the Southeastern states, please provide the percentage of buildings where MCI Companies installed

its own inside wiring, the percentage of buildings where the MCI is leasing inside wiring from another carrier, including the ILEC, and the percentage of buildings where the MCI is using inside wiring owned by the building owner. In each of these situations, please describe with specificity the cost paid for installing or leasing the inside wire in buildings.

MCI'S RESPONSE: MCI adopts and incorporates its General Objections 3, 4, 7, 10, 11, 12, 14, and 15. In addition, MCI hereby provides notice that responsive information may not be available in the form requested. Further, MCI objects on the ground that "inside wiring" is not defined by BellSouth. BellSouth's definition of "loop" does not comport with the Triennial Review Order. BellSouth also does not define "percentage of building", thus there is no basis for comparing numbers of buildings. Thus, MCI objects to and is unable to answer this question as it is vague. MCI further objects to this question as overbroad, and not reasonably calculated to lead to the discovery of relevant and admissible evidence. MCI also objects to this question to the extent MCI previously produced information responsive to this request, thus making the request duplicative, unduly burdensome, and oppressive.

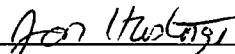
REQUESTS FOR PRODUCTION

1. Produce any documents identified above.


MCI'S RESPONSE: MCI hereby incorporates its objections and responses to Questions 1-6 above. In addition, MCI hereby provides notice that responsive information may not be available in the form requested.

Subject to and without waiving these objections and the notice of unavailability of data, MCI states that, as stated above, responsive documents have been previously provided to BellSouth.

Respectfully submitted this 11th day of February, 2004



Jon E Hastings, Esq
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
Nashville, Tennessee 37219
(615) 252-2306



Kennard B Woods, Esq
WorldCom, Inc
Six Concourse Parkway, Suite 600
Atlanta, Georgia 30328
(770) 284-5497

Attorneys for MCImetro Access Transmission
Services, LLC and Brooks Fiber of Tennessee, Inc

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2004, a copy of the foregoing document was served on the parties of record, via electronically, US mail or hand delivery

Guy Hicks
BellSouth Telecommunications, Inc
333 Commerce St , Suite 2101
Nashville, TN 37201

Ms Carol Kuhnaw
Qwest Communications, Inc
4250 N Fairfax Dr
Arlington, VA 22203

Charles B Welch, Esquire
Farris, Mathews, et Al
618 Church St , #300
Nashville, TN 37219

Henry Walker, Esq
Boult, Cummings, et al
P O Box 198062
Nashville, TN 37219-8062

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P O Box 20207
Nashville, Tennessee 37202

Dale Grimes, Esq
Bass, Berry & Sims
315 Deaderick St , #2700
Nashville, TN 37238-3001

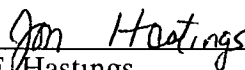
H LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave , N #320
Nashville, TN 37219-1823

Mark W Smith, Esq
Strang, Fletcher, et al
One Union Square, #400
Chattanooga, TN 37402

James Wright, Esquire
United Telephone – Southeast
14111 Capital Blvd
Wake Forest, NC 27587

Nanette S Edwards, Esq
ITC^DeltaCom
4092 South Memorial Parkway
Huntsville, AL 35802

Martha M Ross-Bain, Esq
AT&T Communications of the
South Central States, LLC
1200 Peachtree Street, Suite 8100
Atlanta, GA 30309



Jon E Hastings